UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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SFR INVESTMENTS POOL 1, LLC, Plaintiff(s), v. CARRINGTON MORTGAGE SERVICES LLC, Defendant(s).	Case No. 2:22-CV-521 JCM (EJY) ORDER

Presently before the court is defendant SFR Investment Pool 1, LLC's motion to dismiss plaintiff Carrington Mortgage Services, LLC's amended complaint. (ECF No. 22). Plaintiff filed a response (ECF No. 23), to which defendant replied (ECF No. 24).

I. Background

This matter arises from a disputed foreclosure sale of real property located at 900 Wharton Street, Las Vegas, NV 89130 (the "property") (ECF No. 21). Plaintiff is the current title owner of the property after purchasing it at a previous foreclosure sale on September 7, 2012. *See* (*id.*) That foreclosure sale was initiated by the homeowners' association governing the property after the prior owners failed to timely pay their assessments. *See* (*id.*) Defendant is the current assignee of the deed of trust pursuant to a January 2015 assignment from the original mortgage lender. (*Id.*)

In 2008, the property's prior owners obtained a loan for the purchase price secured by a deed of trust. (*Id.*) The prior owner failed to make payments on the deed, and defendant's predecessor in interest recorded a notice of default on March 4, 2010, evidencing its intention to foreclose. (*Id.*) This notice of default allegedly accelerated the loan underlying the deed of trust.

On August 11, 2011, defendant's predecessor in interest recorded a notice of rescission that rescinded its prior notice of default and, allegedly, decelerated the debt to its originally maturity date. (*Id.*)

In November 2021, a second notice of default and election to sell was recorded on behalf of defendant. (*Id.*) Ten days later, plaintiff allegedly mailed defendant a request for information about the deed of trust. (*Id.*) Plaintiff filed the instant suit on February 9, 2022, alleging that the deed of trust was accelerated no later than March 4, 2010, and presumed satisfied no later than March 4, 2020. (*Id.*) Thus, according to plaintiff, defendant has no claim to the property and cannot foreclose.

This court previously denied plaintiff's motions for a temporary restraining order and preliminary injunction, finding that the hardships did not clearly weigh in plaintiff's favor. (ECF No. 11). Plaintiff later filed an amended complaint. (ECF No. 21). Defendant now moves to dismiss that amended complaint. (ECF No. 22)

II. Legal Standard

A court may dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

"Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (citation omitted).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, the court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of

truth. *Id.* at 678–79. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 678.

Second, the court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 678.

Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has "alleged—but not shown—that the pleader is entitled to relief." *Id.* (internal quotation marks omitted). When the allegations in a complaint have not crossed the line from conceivable to plausible, plaintiff's claim must be dismissed. *Twombly*, 550 U.S. at 570.

The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

> First, to be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.

Id.

If the court grants a Rule 12(b)(6) motion to dismiss, it should grant leave to amend unless the deficiencies cannot be cured by amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). Under Rule 15(a), the court should "freely" give leave to amend "when justice so requires," and absent "undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments . . . undue prejudice to the opposing party . . . futility of the amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182 (1962). The court should grant leave to amend "even if no request to amend the pleading was made." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation marks omitted).

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III. Discussion

Defendant moves to dismiss plaintiff's complaint for failure to state a claim. Plaintiff brings claims for violations of Nevada Revised Statute 107.200 *et seq.* stemming from an alleged failure to provide documentation related to the deed of trust, for quiet title under the theory that the deed of trust was previously extinguished, and for wrongful foreclosure. These claims are all meritless and must be dismissed, with prejudice.

A. Nev. Rev. Stat. 107.200 *et seq.*

First, plaintiff claims that defendant violated Nevada law by failing to timely issue plaintiff several documents pursuant to a statutory request. (ECF No. 21 at 6–7). NRS § 107.200 *et seq.* requires the beneficiary of a deed of trust to provide certain information regarding the debt to the grantor of the property subject to the deed of trust (or the grantor's successor-in-interest) within 21 days of a request. Nev. Rev. Stat. § 107.200 *et seq.* "If no periodic payments are made under the note," as was the case here, "the request must be mailed to the address of the beneficiary listed on the note or deed of trust." Nev. Rev. Stat. § 107.270.

Plaintiff mailed the request to 1600 S Douglass Road Suite 200-A, Anaheim, CA 92806. (ECF No. 23). Defendant is the record beneficiary of the deed of trust pursuant to a 2015 assignment. (ECF No. 21). That assignment lists defendant's address as 1610 East Saint Andrew Place Suite B150, Santa Ana, CA 92705. (ECF No. 1-2 at Ex. 1-K). Plaintiff mailed the request to the wrong address. Although the Anaheim address is clearly one of defendant's addresses, it is not the address listed on the note or deed of trust, which is what the text of the statute contemplates. *See* Nev. Rev. Stat. § 107.200.

Plaintiff failed to comply with the procedural requirements of the statute. Therefore, it cannot state a claim, and it is not entitled to the $300 statutory damages it claims it is owed. Plaintiff's claim under NRS § 107.200 *et seq.* is dismissed, with prejudice.

B. Quiet Title

Defendant also moves to dismiss plaintiff's quiet title claim. Principally, defendant argues that recent Nevada Supreme Court precedent precludes plaintiff's claim as a matter of law. *See Glass v. Select Portfolio Servicing, Inc.*, No. 78325, 2020 WL 3604042, at *1 (Nev.

July 1, 2020) (unpublished disposition); *accord SFR Invs. Pool 1, LLC v. U.S. Bank N.A.*, 507 P.3d 194 (Nev. 2022) (hereinafter *Gotera II*). Plaintiff contends that the precedent is distinguishable, and that Nevada's ancient lien statute extinguished the deed of trust in 2020, ten years after the first notice of default. *See* Nev. Rev. Stat. § 106.240.

Just as the Nevada Supreme Court determined in *Gotera II*, this court finds that the notice of rescission decelerated the debt under the deed of trust. *See* 507 P.2d at 197–98. There is nothing in the instant case that distinguishes it from *Gotera II*. Plaintiff baldly asserts that the loan was accelerated by some unproduced letter rather than the notice of default. (ECF No. 23 at 5–6). However, the Nevada Supreme Court squarely held that "some prior unidentified acceleration" could not have "remained intact after the bank rescinded the notice of default." *Gotera II*, 507 P.2d at 197.

This case is essentially identical to what was before the Nevada Supreme Court in *Gotera II*. After recording the first notice of default in 2011, defendants rescinded that notice the following year. (ECF No. 21). Whether some other unknown and undiscovered letter purported to accelerate the debt means nothing when the rescission clearly decelerates the loan and renders the ancient lien statute inapplicable. Thus, plaintiff's quiet title claim must be dismissed. The deed of trust was never extinguished and plaintiff's rights to the property are not superior to defendant's.

C. Wrongful Foreclosure

Since defendant held a valid interest under the deed of trust, plaintiff's attendant claims for wrongful foreclosure must also be dismissed. Defendant was within its rights to foreclose on the property to satisfy the delinquent deed of trust. As discussed above, that deed of trust was never extinguished.

Plaintiff also claims that defendant never provided a copy of the promissory note, and that defendant foreclosed on amounts not in default. (ECF No. 23 at 6). Plaintiff mischaracterizes the law. Defendant need not provide the note so long as it provides a notarized affidavit of authority stating it is in possession of the note. *See* Nev. Rev. Stat. § 107.0805.

Defendant provided that affidavit here. (ECF No. 1-2 at Ex. 1-L). Plaintiff's half-hearted argument that defendant is not the noteholder is unavailing.

Likewise, plaintiff's argument that defendant was not entitled to foreclose upon the full amount of the loan is equally without merit. Defendant recorded a second notice of default that *did* accelerate the loan in November 2021. It can be simultaneously true that an unproduced, and unsubstantiated letter did not accelerate the loan in 2010, while a recorded notice of default did in 2021. Defendant exercised its right to foreclose and did so after the 35-day cure period required by Nevada law. It did nothing improper in collecting what it was due after the November 2021 notice of default. Plaintiff's claim for wrongful foreclosure is also dismissed, with prejudice.

D. Leave to Amend

Although "[t]he court should freely give leave when justice so requires," the court is not obligated to do so. Fed. R. Civ. P. 15(a)(2). The court need not give leave to amend where "it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (quoting Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995)). Thus, "leave to amend may be denied if it appears to be futile or legally insufficient." *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988) (citing *Gabrielson v. Montgomery Ward & Co.*, 785 F.2d 762, 766 (9th Cir. 1986)). The standard to be applied when determining the legal sufficiency of a proposed amendment is identical to that on a motion to dismiss for failure to state a claim. *Id.*

Determining that plaintiff's claims fail as a matter of law, the court finds that granting plaintiff leave to amend would be futile. The plain language of the rescissions leaves the deed of trust valid. Given that, plaintiff cannot state a claim for relief; defendant holds a valid interest in the property. The court thus dismisses the complaint in its entirety, with prejudice.

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion to dismiss (ECF No. 22) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that plaintiff's first amended complaint (ECF No. 21) be, and the same hereby is, DISMISSED, with prejudice.

The clerk is instructed to enter judgment accordingly and close the case.

DATED November 17, 2022.

James C. Mahan

UNITED STATES DISTRICT JUDGE